

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED STATES OF AMERICA, and)
COMMONWEALTH OF VIRGINIA, ex rel.)
Megan L. Johnson, Leslie L. Webb, and)
Kimberly Stafford-Payne,)
Plaintiffs,)
vs.) Civil Action No. 1:07-CV-000054
UNIVERSAL HEALTH SERVICES, INC.,)
KEYSTONE EDUCATION AND YOUTH)
SERVICES, LLC, and KEYSTONE)
MARION, LLC, d/b/a MARION YOUTH)
CENTER,)
Defendants.)

JOINT STATUS REPORT REGARDING SETTLEMENT

Defendants Universal Health Services, Inc., Keystone Education and Youth Services, LLC, and Keystone Marion, LLC, d/b/a Marion Youth Center (“Defendants”), together with the United States of America (“the United States”) and the Commonwealth of Virginia (“the Commonwealth”) (collectively, “the Government”), and Relators (collectively, “the Parties”) file the following Joint Status Report Regarding Settlement:

1. This Court’s August 16, 2011 Order (Dckt. No. 299) set forth a series of deadlines for finalizing the settlement agreement in principle that was reached between the Parties on August 8, 2011.

2. Pursuant to that Order, on September 16, 2011, the Parties filed a Joint Status Report regarding the status of the settlement negotiations. (*See* 9/16/11 Joint Status Report, Dckt. No. 301.) That status report provided that the parties had made progress in negotiating the

settlement agreement between the Government and Defendants (“Government Settlement Agreement”), the agreement between the Relators and Defendants (“Relators Settlement Agreement”), and the Corporate Integrity Agreement (“CIA”) between Defendants and the Office of Inspector General for the United States Department of Health and Human Services (“HHS-OIG”). The 9/16/11 Joint Status Report also indicated that the agreements had not yet been finalized due to several outstanding issues that needed to be resolved. Specifically, Defendants and the Government needed to agree on the scope of the release, whether interest would be included in the agreement, and the language governing “unallowable costs” for the purposes of Medicaid cost reporting. In addition, Defendants and HHS-OIG needed to resolve two key obstacles to settlement that appeared in HHS-OIG’s draft CIA.

3. On September 21, 2011, the Commonwealth filed a Motion to Toll the Court’s August 16, 2011 Order due to the fact that the Government Agreement and the CIA had not yet been finalized. (Commonwealth’s Motion to Toll 8/16/11 Order, Dckt. No. 302.) The Court granted the Commonwealth’s Motion on September 23, 2011. (Order Granting Motion to Toll, Dckt. No. 304.)

4. Since the 9/16/11 Joint Status Report, the Parties have made the following progress toward finalizing the agreements:

- Defendants and the Government disagreed over the applicable time frame of the release and the statutory liability that would be encompassed by the release. On September 16, 2011, Defendants proposed a compromise on the applicable time frame of the release. On September 20, 2011, the Commonwealth provided Defendants with its position on the parties’ proposed compromise with respect to the applicable time period of the release and the statutory liability that will be

encompassed by the Commonwealth's release. The same day, Defendants notified the Commonwealth of their objections to the Commonwealth's position on the statutory liability that will be encompassed by the release. The Commonwealth indicated that it will analyze the issue and provide a response.

- On September 27, 2011, following extensive written and verbal communication between Defendants and HHS-OIG regarding the CIA, those parties met to address the key issues relating to the CIA. The meeting was productive and Defendants promised to provide HHS-OIG with a comprehensive compromise proposal by September 30, 2011. Defendants subsequently notified HHS-OIG that, due to the religious holiday, the proposal could not be approved by September 30, 2011, and will be circulated on October 3, 2011. As a result of the potential impact of the CIA (which will impose obligations on Marion Youth Center for the next five years), the CIA could not be finalized by September 23, 2011, as originally contemplated by the Court's August 16, 2011 Order. However, Defendants and HHS-OIG believe that the specific obstacles to finalizing the CIA may have been resolved.

5. The status of each pending agreement can be summarized as follows:

Government Settlement Agreement

- Defendants seek a release that extends through the present. The Government seeks a release that ends as of March 2, 2010. The Commonwealth has provided Defendants with its suggested position on the parties' proposed compromise. On September 30, 2011, the United States stated that it will not accept the compromise at this time, but it will continue to discuss this issue with Defendants.

- Defendants have requested that the Commonwealth's release include any claims that could be brought under Va. Code Ann. § 32.1-313, Va. Code Ann. § 32.1-312(A)(3), Va. Code Ann. § 32.1-321.2, Va. Code Ann. § 32.1-321.3, and Va. Code Ann. § 2.2-4321. On September 20, 2011, the Commonwealth indicated that it would not include liability under those statutes (with the exception of Va. Code Ann. § 32.1-312(A)(3)) in the release. On the same day, Defendants rejected the Commonwealth's position. The Commonwealth indicated that it would analyze the issue and respond to Defendants.
- Defendants have requested revisions to a provision in the agreement that addresses "unallowable costs" for the purposes of Medicaid cost reporting. On September 30, 2011, the United States provided Defendants with its position on the issue.
- The Government has requested that Defendants pay interest on the settlement amount from September 2, 2011 until the date of payment. Defendants have communicated that they will not agree to this request. The parties have not yet resolved this dispute, but continue to negotiate the point in good faith.

Relators' Settlement Agreement

- On September 7, 2011, Defendants circulated to Relators a proposed Settlement Agreement that would govern their individual claims. Relators provided their proposed revisions to the draft agreement on September 30, 2011. Defendants will review those suggestions promptly and the parties hope to finalize the agreement as soon as possible.

Corporate Integrity Agreement

- As noted above, Defendants met with HHS-OIG on September 27, 2011 in an attempt to address and resolve the two major obstacles in the CIA settlement negotiations. The meeting was productive and Defendants will be circulating a comprehensive compromise proposal to OIG on October 3, 2011.

6. Due to delays in the negotiation of the various agreements, on September 20, 2011, the Commonwealth proposed filing a joint motion to amend the scheduling order. At that time, because of the status of the CIA negotiations, Defendants were not able to agree to a proposed date. On September 29, 2011, following the meeting between Defendants and HHS-OIG, Defendants proposed establishing a new scheduling order that would result in the execution of all three agreements on November 4, 2011. The United States accepted the new scheduling order, but the Commonwealth seeks to adjust the scheduling order to reflect the timeframe for internal approvals that is set forth in this Court's 8/16/11 Order and this Court's 9/23/11 Order.

7. As of the time of this filing, the Parties have not yet finalized their agreement on the new scheduling order. The Parties hope to finalize that agreement and submit a motion to modify the scheduling order as soon as possible.

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SIGNATURE TO FOLLOW

Dated: September 30, 2011

/s/ Rick A. Mountcastle
Rick Mountcastle
Daniel P. Bubar
UNITED STATES ATTORNEY'S OFFICE
P.O. Box 1709
Roanoke, VA 24008
Telephone: (540) 857-2254
Fax: (540) 857-2283
Email: rick.mountcastle@usdoj.gov
daniel.bubar@usdoj.gov

Counsel for the United States

/s/ Megan L. Holt
Megan L. Holt (VSB No. 75005)
Elizabeth L. Fitzgerald (VSB No. 75479)
OFFICE OF ATTORNEY GENERAL
COMMONWEALTH OF VIRGINIA
900 East Main Street
Richmond, VA 23219
Telephone: (804) 786-7760
Fax: (804) 786-0807
Email: mholt@oag.state.va.us

Counsel for the Commonwealth of Virginia

/s/ Daniel R. Bieger
Daniel Robert Bieger
Copeland & Bieger, PC
P. O. Box 1296
Abingdon, VA 24212
Telephone: (276) 628-9525
Fax: (276) 628-5901
Email: mail@copelandbieger.com

Counsel for Relators

Respectfully submitted,

/s/ Martin A. Donlan
Martin A. Donlan, Jr. (VSB No. 15709)
W. Benjamin Pace (VSB No. 48633)
WILLIAMS MULLEN, PC
1021 East Cary Street
Post Office Box 1320
Richmond, VA 23218-1320
Telephone: (804) 783-6932
Fax: (804) 783-6507
Email: mdonlan@williamsmullen.com

Frederick Robinson (D.C. Bar No. 367223)
Peter Leininger (D.C. Bar No. 987136)
Fulbright & Jaworski L.L.P.
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2623
Telephone: (202) 662-0200
Facsimile: (202) 662-4643
Admitted *pro hac vice*

Counsel for Defendants

/s/ Mark. T. Hurt
Mark T. Hurt
159 West Main Street
Abingdon, VA 24210
Telephone: (276) 623-0808
Fax: (276) 623-0212
Email: markthurt@yahoo.com

Counsel for Relators